

The Right of United States Lawyers to Practice Abroad†

In Sweden

Report by Ruth B. Ginsburg**

At present, the permission available to a United States lawyer for the practice of his profession in Sweden remains a hypothetical matter. Such practice is currently nonexistent. This state of affairs may be ascribed to the absence to date of a demand for, or interest in providing, the services of a permanently on-the-scene expert in the laws of the United States.¹ It is hardly the result of a calculated closed-door policy on Sweden's part. On the contrary, Swedish law concerning legal assistance poses no general impediment to the

*BENJAMIN BUSCH, Partner, Katz & Sommerich, New York City; graduate of City College of New York and of Brooklyn Law School; vice president, American Foreign Law Association; Director, Consular Law Society; vice chairman, Section of International and Comparative Law of the American Bar Association; author of "Foreign Law—A Guide to Pleading and Proof."

†This is the final article on the practice of law abroad by U.S. lawyers. In the April issue the right to practice in Belgium, England, Italy, Spain, the Netherlands and Portugal was reviewed. In the January issue the right to practice in the USSR, France and Austria was reviewed.

** Associate Professor of Law, Rutgers Law School; LL.B., Columbia Law School, 1959. The author is indebted to Vice Consul Lars Norberg of the Royal Consulate General of Sweden in New York for his review of the draft of this report and his valuable comments, which contributed substantially to the final composition of the report. Gratitude is also owed to *Sveriges advokatsamfund* (the Swedish Lawyers' Association) for reviewing the report and, by letter dated January 16, 1968, confirming its accuracy.

¹ The present demand for information and advice on American law is apparently met principally through the offices of Swedish lawyers who have established cooperative relationships with American firms, and through assistance rendered by the Foreign Ministry. A number of New York law firms, for example, have established reciprocal consulting relationships with particular law offices in Sweden. Information as to such firms and the offices in Sweden with which they consult may be obtained from the Royal Consulate General of Sweden in New York. As to information available through the Foreign Ministry, see International Co-operation in Litigation: Sweden, in International Co-operation in Litigation: Europe 344, note 63 and accompanying text (Columbia Law School Project on International Procedure), The Hague, 1965.

It may be relevant to note in this context that approximately fifty American companies whose operations are international in scope have subsidiaries in Sweden. A list of these companies may be obtained from the Royal Consulate General of Sweden in New York.

rendition of legal advice in Sweden by a United States lawyer or, indeed, any person, whether foreign or local, lawyer or layman.

Since the system of legal representation in Sweden differs from patterns found elsewhere on the continent, it seems appropriate at this point to describe briefly the basic features of the Swedish system.² Following this description, and based primarily on it, an opinion will be conjectured as to the extent of the permission that is likely to be accorded to a United States lawyer who wishes to engage in counseling as an occupation in Sweden.

A "bar monopoly" has never existed in Sweden. There is no reservation of the practice of law, in or outside the courtroom, to university trained attorneys. As to courtroom representation, although the law generally does not require that the representative be a lawyer, it does specify that he be a resident citizen of Sweden. However, even this specification is subject to court-made exception.³

While in theory, legal practice in Sweden is not the privilege of a professional class, during the present century, in matters of any complexity, self-representation or representation by a person who lacks formal training has become increasingly exceptional.⁴ Still, one can find listed in Stockholm's telephone directory many so-called juridical bureaus—offices conducted in whole or in part by persons without formal education in law or by persons who have law degrees, but have not qualified for membership in the Swedish Lawyers' Association.⁵

The Swedish lawyer advised clients, drafts legal documents, and represents litigants in court. In this respect, he is like his American counterpart. He combines the functions of the French *avoué*, *avocat* and *notaire* and of the English solicitor and barrister. Further, he practices in all the courts. Any lawyer, in theory, any solvent citizen, can plead at the highest level as well as in the courts of first instance.

By American standards, there are virtually no large law offices in Sweden. Approximately 45% of the bar is made up of single

² For a more detailed description, see Ginsburg & Bruzelius, Civil Procedure in Sweden 50-78 (Columbia Law School Project on International Procedure), The Hague, 1965.

³ See Code of Judicial Procedure 12:2, 22; Hassler, *Svensk civilprocessrätt* 107 (ed. 1963) (provision for exceptions to the requirement that counsel be a resident citizen was intended particularly to enable citizens and residents of other Nordic countries to appear as counsel in Swedish courts).

⁴ See 1 EKELÖF, *RÄTTEGÅNG* 157 (1957).

⁵ The Swedish Lawyers' Association is described in the text at note 8 *infra*.

practitioners; the majority are partners in or associated with a law firm of 2 to 4 attorneys.

In Sweden, the title *jurist* is the professional name descriptive of all persons who hold law degrees—regardless of the particular field in which they are engaged. Judges, state prosecutors, independent attorneys, house counsel, law professors, many government administrative officers, all these are jurists.⁶ Their initial training is taken at one of Sweden's three law schools, Uppsala, Lund, or Stockholm. Each of the law schools is operated by the state, has the same entrance requirements, and offers the standard curriculum prescribed by cabinet decree.

Law school is entered upon completion of secondary school education, generally at age 19 or 20. The program runs from 4 1/2 to 5 1/2 years, depending upon the pace at which the individual student proceeds. There is no requirement that exams be taken at the conclusion of specified periods. Rather, a student may apply for examination in a subject at any time he believes himself sufficiently prepared, either prior or subsequent to the end of the study period suggested in the law school course plan.⁷ Failed examinations may be repeated, but after four failures in the same subject, in the discretion of the faculty, the student may be dismissed. The law schools do not give a comprehensive examination to degree candidates. Moreover, of particular significance in the context of this report, no bar examination exists in Sweden.

Because neither a requirement of formal education nor qualification by examination conditions the right to function as an attorney in Sweden, there is no place in Sweden's legal system for an institution that controls admission to the bar. However, two organizations, the Swedish Lawyers' Association (*Sveriges advokatsamfund*) and the Swedish Federation of Jurists (*Sveriges juristförbund*) have been prominent in representing the interests of the legal profession.

The Swedish Lawyers' Association⁸ is the association of univer-

⁶ The judicial career, as well as the roster of public prosecutors, includes a substantial number of women jurists.

⁷ Unless a professor announces in the course catalogue at least six examination sessions during the calendar year, the student is entitled to be examined in a course for which he has enrolled within 14 days of his request.

⁸ The Association has been regarded as an official institution since 1947, when its charter was ratified by the Swedish cabinet. The Code of Judicial Procedure recognizes the purpose of the Association, enumerates its principal functions, and specifies admission requirements. Code of Judicial Procedure 8:1-8.

sity educated attorneys engaged in independent practice, with emphasis on the word independent. House counsel, i.e., salaried employees of a single concern, for example, a bank or an insurance company, are not eligible for membership in the Lawyers' Association, nor are jurists employed by the government. The Lawyers' Association has won for its members a rather significant status symbol: the exclusive right to the title *advokat*. Use of the title by someone other than a member of the Association is a criminal offense. To qualify for membership in the Lawyers' Association, a *jurist* must be a resident citizen, at least twenty-five years of age, and professionally experienced. The professional experience requirement is normally met by five years of employment after obtaining a law degree, including three years of service as either an assistant to an *advokat*, a lawyer for a legal aid institution, or an independent practitioner. It should be stressed, however, that apart from the exclusive right to be called an *advokat*, and the limitation of the Code of Judicial Procedure that only an *advokat* may serve as court-appointed defense counsel in a criminal case,⁹ no official privilege attends membership in the Lawyers' Association.¹⁰

Unlike the Lawyers' Association, whose membership is limited to attorneys in private practice, the Swedish Federation of Jurists encompasses all branches of the legal profession, judges, prosecutors, government attorneys, as well as private attorneys. The Federation carries on a number of investigative and educational activities, but primarily it functions as a trade union. Its principal task is the negotiation of agreements with the government concerning the salaries and working conditions of judges and other jurists in government service.

One legal professional important in many continental countries—the notary—has no precise counterpart in Sweden. While there is at least one officer designated as notary public in every Swedish

⁹ Code of Judicial Procedure 8:1, 21:5.

In civil cases in which the court appoints counsel for an indigent litigant, it is recommended, but not required, that the counsel designated to be a *jurist* employed by a legal aid institution or an *advokat* who has customarily received court appointments. See Law on free legal proceedings, June 19, 1919, § 5.

¹⁰ Thus, while membership in the Lawyers' Association does require a Swedish law degree as well as Swedish citizenship and residence, the rendition of legal advice in Sweden is not conditioned upon these requirements.

municipality, his role is relatively minor. The Swedish notary public does not participate in the drafting of association charters, wills, or real estate conveyances. He is authorized to attest to the genuineness of signatures and the authenticity of documents, but he is not empowered to administer oaths. Under Swedish law, oaths may be administered only by a judge presiding in court. Generally, the notary's commission is not an exclusive occupation. Stockholm excepted, the notary may be a person who lacks formal education in law. In many cases, the post is filled by an administrative employee of the unit of local government.

Since legal practice in Sweden is not reserved to holders of law degrees and is not dependent upon admission to a "bar," there would appear to be no prohibition in that country of the professional counseling that a United States lawyer is equipped to provide. The United States lawyer would not be permitted to use the title *advokat*. And, apart from an exception granted for a particular case, his citizenship would disqualify him from representing a litigant in court.¹¹ However, his services as consultant on the laws of his own country and with respect to the planning and consummation of international business transactions are likely to be regarded as entirely appropriate. If his stay in Sweden is to exceed three months he will be required to obtain a sojourn permit (*uppehållstillstånd*) from the State Aliens Commission (*Statens Utlänningskommission*).¹² As authorization for his occupational activities, he may be required to obtain a work permit (*arbetsstillstånd*) from the same Commission. The necessity of a work permit will depend upon his employment status. Under the currently applicable provisions, no work permit would be required for an independent practitioner, or a partner in an American firm. However, a work permit would be necessary for a salaried associate, whether employed by an American or a Swedish firm.¹³ At present, there is no indication that receipt of

¹¹ See text at note 3 *supra*.

¹² An American citizen who is not an employee may practice his profession, i.e., give information and provide advice on American law, for a three month period without obtaining any visa or permit.

¹³ There is a specific exemption from the work permit requirement for an alien who, at the time of his birth, was a Swedish citizen.

As a rule, an alien who will have employee status in Sweden must obtain his work permit before entering the country. His application may be forwarded through the offices of the local Consulate General.

the necessary Commission permission¹⁴ would entail special difficulties.

In response to the questions which the Committee was specifically asked to address, Sweden does not impede a United States lawyer from spending time (up to three consecutive months without any visa or permit) in that country, regularly or occasionally, for the purpose of consulting with, and giving advice to his clients, or participating in contract negotiations or arbitration proceedings (as representative or arbitrator). Although there appears to be no instance of it in practice, there would seem to be no impediment to a door plate listing, provided, of course, that the United States lawyer does not purport to be an *advokat*. Nor is there any restriction as to the place in which the United States lawyer's advice may be rendered. He may render it in the office of the client, or that of a cooperating Swedish attorney, or any other convenient place.

¹⁴ See Law on aliens, April 30, 1954 §§ 7, 9, 10, 15; Decree on aliens June 4, 1954, §§ 1, 27, 34, 37.

Applications in Sweden for sojourn and work permits are made through the police authorities.

The American practitioner might apply for a permanent residence permit (*bosättningsstillstånd*) rather than a sojourn permit. A permanent residence permit would eliminate the need for a work permit otherwise required for a person who is not self-employed. However, since the procedure for obtaining a permanent residence permit is relatively complex, application for a sojourn permit and, when the applicant is an employee, a work permit, would seem the preferable course.